

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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Order Instituting Rulemaking Regarding  
Broadband Infrastructure Deployment and to  
Support Service Providers in the State of  
California.

Rulemaking 20-09-001

**OPENING COMMENTS OF THE PUBLIC ADVOCATES OFFICE ON ENERGY  
INVESTOR-OWNED UTILITIES' PHASE II-A BROADBAND PILOT PROPOSALS**

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## I. INTRODUCTION

Pursuant to the July 13, 2021 E-Mail Ruling Extending Filing Deadline For Investor Owned Utilities Fiber Pilot Proposals, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits these opening comments on the Phase II-A broadband pilot proposals (pilot proposals) submitted by Energy Investor-Owned Utilities (Energy IOUs) on July 30, 2021. In the April 20, 2021 Amended Scoping Memo, the California Public Utilities Commission (Commission) ordered Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric (SDG&E), Southern California Edison (SCE), PacifiCorp, Liberty Utilities, and Bear Valley Electric Service to work with the Commission's Communications Division Staff to identify at least one unserved pilot community within each service territory where the Energy IOU could provide dark or managed fiber services to a local government, tribal government or an existing communications service provider that will offer broadband to households and businesses within that unserved community.<sup>1</sup> The Energy IOUs hosted a workshop to discuss their prospective proposals on June 30, 2021 and submitted their pilot proposals on July 30, 2021. Based on a review of the Energy IOUs' proposals, the Commission should:

- Make the pilot program voluntary for the Energy IOUs and require shareholders to bear the cost of the projects.
- To the extent the Commission makes the pilot program mandatory and decides that Energy IOUs should track their costs, the Energy IOUs should track their costs in a new memorandum account subject to reasonableness review, not in a balancing account, as suggested by SDG&E.
- Ensure that all pilot proposals' middle mile networks are open access.
- Ensure that all pilot proposals which include last mile broadband access service can meet the Governor's Executive Order<sup>2</sup> to meet minimum broadband speeds of 100 Megabits per second (Mbps) download speed at affordable prices.

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<sup>1</sup> Scoping Memo and Ruling, pp. 6-7.

<sup>2</sup> Governor Gavin Newsom Executive Order N-73-20. August 14, 2020. <https://www.gov.ca.gov/wp-content/uploads/2020/08/8.14.20-EO-N-73-20.pdf>.

- Require any communications service providers currently providing service in the pilot proposal areas to continue to provide service.
- Require Energy IOUs and communications service providers participating in the pilot projects to report specific information related to their pilot projects so that the Commission can evaluate the outcomes of the pilot program.

These comments primarily respond to SDG&E and SCE's pilot proposals. However, Cal Advocates reserves the right to file reply comments on the comments related to other Energy IOUs' proposals.

## II. DISCUSSION

### A. **The Commission should make the pilot program voluntary for the Energy IOUs. If the Energy IOUs voluntarily pursue the projects, shareholders should bear the cost.**

Energy IOUs' primary responsibility is to provide reliable, affordable energy to California's households, anchor institutions, and businesses. This broadband pilot program does not fit within the Energy IOUs' mandate, and thus, the Commission should make it voluntary for Energy IOUs to participate. If Energy IOUs choose to participate in the pilot program, all costs of the pilot projects should be recovered from customers of the pilot projects and the Energy IOUs' shareholders. The broadband pilot program should not unreasonably shift costs to energy ratepayers for the installation of communications services infrastructure that may result in higher energy bills.<sup>3</sup>

SCE's pilot proposal states its shareholders will pay for all capital investments and incremental operating expenses.<sup>4</sup> However, SDG&E states that it will request the establishment of a balancing account for the recovery of costs related to the broadband pilot project, which poses the risk that costs not recovered from revenues received from entities utilizing the Energy

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<sup>3</sup> Pub. Util. Code § 451 requires that "All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable..." Requiring energy customers to pay for communications infrastructure is neither just nor reasonable.

<sup>4</sup> Southern California Edison Phase II-A Pilot Proposal, R.20-09-001, July 30, 2021, [hereinafter "SCE Pilot Proposal"], pp. 8, 12, 13.

IOUs pilot proposal would be recovered through energy ratepayers' rates.<sup>5</sup> The Commission should make the pilot program voluntary for the Energy IOUs and require that customers of the pilot projects and Energy IOUs' shareholders pay all costs incurred, which will make it unnecessary for Energy IOUs to track costs in a balancing account or a memorandum account.

**B. If the Commission makes the pilot program mandatory, Energy IOUs should track costs in a new memorandum account.**

To the extent the Commission makes the pilot projects mandatory and nevertheless decides that Energy IOUs should track their costs, the Energy IOUs should track costs directly attributable to the pilot projects in a new memorandum account subject to reasonableness review, not in a balancing account, as suggested by SDG&E. Balancing accounts are not the proper mechanism for recording costs for two reasons. First, establishing a balancing account without a designated, predetermined funding source may result in Energy IOU ratepayers becoming the default payment source. SDG&E notes that it would request "protection of ratepayers from cross subsidizing communications companies;"<sup>6</sup> however, the use of balancing accounts to record pilot program costs may inherently increase this very risk. Second, balancing accounts remove an incentive for controlling project costs and increase the uncertainty in determining actual costs of pilot activities, such as engineering assessments or pole upgrades. To the extent the Commission makes the pilot projects mandatory and nevertheless decides that Energy IOUs should track their costs, the Energy IOUs should track costs directly attributable to the pilot projects in a new memorandum account subject to reasonableness review.

**C. The Commission should ensure that all pilot proposals' middle mile networks are open access.**

None of the Energy IOUs that submitted pilot proposals stated that they plan to make the middle mile fiber infrastructure open access.<sup>7</sup> Energy IOUs should offer local governments and

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<sup>5</sup> San Diego Gas & Electric Company (U 902 M) Phase II-A Pilot Proposal, R.20-09-001, July 30, 2021, [hereinafter "SDG&E Pilot Proposal"], p. 14.

<sup>6</sup> SDG&E Pilot Proposal, p. 14.

<sup>7</sup> In this context, we define open access as an arrangement where the middle mile provider offers nondiscriminatory access to retail last mile providers on reasonable and equal terms. The retail last mile

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last mile communications service providers open access to any middle mile networks that result from the Energy IOUs' pilot proposals under non-discriminatory terms and conditions. Open access middle mile networks can promote last mile service that can increase customer choice. Furthermore, an open access middle mile network can reduce costs for last mile providers in building out the last mile networks, which should result in lower prices for broadband customers.<sup>8</sup>

**D. The Commission should ensure that all pilot proposals are capable of providing 100 Mbps speed at affordable prices.**

The Commission should require that technologies used for last mile broadband access are capable of achieving the Governor's Executive Order (E.O.) N-73-20 goal of 100 Mbps download speed and that retail communications service providers participating in the pilot program offer broadband services to families, small businesses, and anchor institutions at prices they can afford.

SDG&E's Pilot Proposal Option 1 may not meet the state's broadband speed goals or significantly improve broadband availability in the selected area if SDG&E partners with a last mile provider with limited service plans. SDG&E is engaging with LTD Broadband, a fixed wireless last mile provider, to discuss possible opportunities for collaborating on a pilot project.<sup>2</sup> There is evidence that fixed wireless service may not deliver 100 Mbps download speeds, and that fixed wireless service is very expensive and may be unattainable for potential customers to subscribe to. Table 1 shows the price and speeds of LTD Broadband plans. As shown in this table, LTD Broadband does not offer plans over 35 Mbps and its 35 Mbps plan costs \$110 per month. If SDG&E partners exclusively with LTD Broadband, SDG&E's pilot project areas are likely to still be considered unserved based on the service speed thresholds established in this proceeding even after the projects are complete.

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providers have the billing relationship with the end use customer. This is consistent with the Commission's definition of open access: "In open access networks, a broadband provider offers [Internet Service Providers] ISPs and other entities nondiscriminatory access to its middle-mile infrastructure on reasonable and equal terms." D.21-03-006, R.20-08-021. Decision Modifying Data Submission Requirements and Requiring Open Access for California Advanced Services Fund Projects. p.10.

<sup>8</sup> Benton Institute, *If We Build It, Will They Come? Lessons from Open-Access, Middle-Mile Networks*, p. 4. [https://www.benton.org/sites/default/files/OAMM\\_networks.pdf](https://www.benton.org/sites/default/files/OAMM_networks.pdf).

<sup>2</sup> SDG&E Pilot Proposal, pp. 8, 13.

**Table 1: LTD Broadband Advertised Plan Speeds and Prices<sup>10</sup>**

<b>Plan Name</b>	<b>Faster</b>	<b>Family</b>	<b>Ultra</b>	<b>Home Office</b>
<b>Download Speed</b>	6 Mbps	10 Mbps	25 Mbps	35 Mbps
<b>Upload Speed</b>	1 Mbps	2 Mbps	3 Mbps	7 Mbps
<b>Plan Price</b>	\$50	\$70	\$80	\$110

**E. The Commission should require communications service providers currently providing service in the pilot proposal areas to continue to provide service.**

The Commission should require any communications service providers that currently provide service in pilot proposal areas to continue to provide service throughout the development of the projects and once the projects are complete. Communications service providers that currently provide service in pilot proposal areas should not be permitted to abandon customers in the area after new last mile communication service providers begin offering service as a result of the pilot projects. California Public Utilities (Pub. Util.) Code Section 709(a) declares that the state must work towards “affordability and widespread availability of high-quality telecommunications services to all Californians.” Pub. Util. Code Section 451 requires communications service providers to “furnish and maintain such adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities ... as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.” Requiring existing communications providers to maintain adequate service is within the Commission’s jurisdiction and is critical to ensuring customers have reliable and affordable service.

**F. The Commission should require Energy IOUs and communications service providers participating in the pilot projects to report specific information so that the Commission can evaluate the outcomes of the pilot program.**

The Commission should evaluate the pilot projects to determine whether the pilots should be continued or expanded and if so, whether the Commission should revise the program. To

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<sup>10</sup> LTD Broadband, “Plans & Pricing”, <https://ltdbroadband.com/plans>, accessed on August 20, 2021.

support this evaluation, the Energy IOUs should submit annual reports that track and report pilot project costs project revenues, and project challenges and successes. Communications service providers participating in the pilot projects should also submit annual reports that track the speeds and price of last mile services offered, the number of communications customers who have broadband available through the pilot program, and the number of customers who have subscribed to service through the pilot program. The Commission should evaluate the benefits and costs of the program to communications customers. If the Commission decides to continue or expand the pilot program, the Commission should consider additional modifications to the pilots as needed.

### **III. CONCLUSION**

Cal Advocates recommends the Commission make the pilot program voluntary for Energy IOUs and require shareholders to pay for the projects. However, to the extent the Commission makes the pilot program mandatory and decides that Energy IOUs should track their costs, the Energy IOUs should track costs in a new memorandum account that is subject to reasonableness review. The Commission should also ensure that all pilot proposals' middle mile networks are open access and that last mile broadband access service can meet minimum broadband speeds of 100 Mbps download speed at affordable prices. The Commission should also require any communications service providers currently providing service in the pilot proposal areas to continue to provide service. Finally, the Commission should require Energy IOUs and communications service providers participating in the pilot projects to report information related to their pilot projects, so that the Commission can evaluate the outcomes of the pilot program.

Respectfully submitted,

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